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EXAMINER

ASHBURN, STEVEN L

ART UNIT PAPER NUMBER

3714

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/689,510

Applicant(s)

WEBB ET AL.

Examiner

Steven Ashburn

Art Unit

3714

-- Th MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.


## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

  
MARK SAGER  
PRIMARY EXAMINER

***DETAILED ACTION******Claim Rejections - 35 USC § 103***

**Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoseloff, U.S. Patent 6,312,334 (Nov. 6, 2001) in view of Koza, U.S. Patent 4,582,324 (Apr. 15, 1986).**

*Yoseloff* discloses a gaming system that entices players to risk an initial award in return for the opportunity to receive greater payoff in a second game segment in which players chooses from several masked awards. The reference suggests basing the game's theme on popular game shows such as LET'S MAKE A DEAL<sup>®</sup>, THE PRICE IS RIGHT<sup>®</sup>, WHEEL OF FORTUNE<sup>®</sup>, JEOPARDY!<sup>®</sup>, HOLLYWOOD SQUARES<sup>®</sup>, or any game having the visual appearance of a game shows with a host, audience, participants, etc. *See col. 7:63-9:8*. In one embodiment, *Yoseloff* describes the LET'S MAKE A DEAL<sup>®</sup> game wherein players risk a prize in return for a masked prize behind one of three doors, as in the live television game show. *See fig. 6, 7; col. 7:18-33*. Furthermore, *Yoseloff* suggests maintaining "thematic continuity" between the gaming device and the television game show upon which it is based. *See col. 7:48-63*.

In regards to the claims 1, 10 and 38, *Yoseloff* teaches the following:

- a. An initial award value offered to a player. *See col. 8:46-57, 9:46-67. (Claims 1, 10)*
- b. A plurality of masked awards, a second award being an enticement award having a value greater than the value of the initial award, and a third award being a consolation award having a value less than the value of the initial award. *See fig. 7; col. 7:19-35. (Claims 1, 10)*
- c. Means for enabling the player to keep the initial award or to select another masked award. *See col. 6:35-44, 9:46-67. (Claims 1, 10)*

As listed above, *Yoseloff* discloses all the features of the claimed subject matter except the following:

Art Unit: 3714

- a. Means for disclosing information about the awards to the player including that one of the unmasked awards is an enticement award having a value greater than the value of the initial award.
- b. The initial award being selected from a first pool; the second award being from a second pool and the third award being from a third pool wherein the first, second and third pools are used repeatedly so that repeated play of the game provides information about the ranges of values in the pools.

Regardless of the deficiencies, these features would have been obvious to an artisan at the time of the invention.

First, slot machines typically disclose information to players about potential awards to entice them to risk a present value for the chance of a larger payoff. For example, the primary game *Yoseloff* displays a paytable listing the payout per coin wagered by the player. *See fig. 4, 5; col. 11:36-12:32*. Notably, *Yoseloff* suggests that displaying the payoff serves as an enticement to continue wagering. *See id.* Displaying payoff information allows players to calculate the difference between a present value and a potential payoff and thereby evaluate whether the chance of receiving the larger payout is worth risking the present value. Thus, it would have been obvious to an artisan at the time of the invention to modify the game system disclosed by *Yoseloff*, wherein players are enticed to wager their winnings for the opportunity to win a larger payoff, to provide means for informing players of the values of the potential payoffs to allow them to evaluate the wager's risk. As a result, the operator may increase revenues due the increased number of wagers placed by players who typically do not undertake risk without knowing the value of the associated payoff.

Second, it was known in the art at the time of the invention to select awards from independent pools having different prize levels. *Koza* discloses a gaming machine having game features controllable by a game player. *See col. 1:36-52*. The machine comprises player control means for providing player

Art Unit: 3714

input signals for player manipulation of at least a portion of the game features to achieve a designated objective and means for providing an opportunity to win a prize in response to activation by the player and for determining a prize win independent of player input signals. *See id.* A game processor provides a presentation of game features according to a predetermined set of game conditions wherein the presentation discloses a prize award through presentation to give the player the illusion that the prize award is determined by player skill. *See id.* In specific regards to the claims, *Koza* describes a multi-level pool system wherein predetermined game outcomes are selected from different award pools to ensure appropriate distribution of the possible outcomes from each level. *See col. 11:26-31.* A first pool contains low-end awards, a second pool contains a intermediate level awards and a third pool contains high-end awards. *See id.* Thus was generally within the skill of an artisan to select awards of different levels from different award pools.. Notably, *Koza* suggests that other methods of generating outcomes are substitutable for the pool-based system; for example, random selection. *See col. 12:28-31.*

In view of *Koza*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the gaming device taught by *Yoseloff*, wherein the player is offered the chance to win a prize from one of three levels including an initial award, a high-level award and a low-level award, to add the feature of the initial award being selected from a first pool; the second award selected from a second pool and the third award selected from a third pool as alternate means to select game awards. As taught by *Koza*, selection from multiple pools is a known alternative to other means of generating random distributions in a gaming device and is useful in games with multi-level award to ensure appropriate distribution of the possible outcomes from each level.

Third, it is implicit in *Koza* that the first, second and third pools are used repeatedly so that repeated play of the game provides information about the ranges of values in the pools. Here, a “pool” defines a set of possible awards wherein the pools are used repeatedly to generate game outcomes for

Art Unit: 3714

players. Because the pools are used repeatedly, players will inherently learn the range of values in the pool through repetition.

Consequently, for all the reasons given above the claims are unpatentable because they would have been obvious to an artisan at a time prior to the invention when the prior art taken as a whole.

In regards to claims 2 and 11, *Yoseloff* additionally teaches means for informing the player of the initial award. *See fig. 5.*

In regards to claims 3-5 and 12-14, *Yoseloff* additionally teaches means for informing the player of the value of the enticement award and consolation award before the player's selection. *See fig. 7; col. 5:34-43. (Claims 3-5, 12-14)*

In regards to claim 6, *Yoseloff* additionally teaches a plurality of initial awards. *See fig. 1:26.*

In regards to claims 7, *Yoseloff* additionally teaches a plurality of enticement awards. *See fig. 1:30. (Claim 7)*

In regards to claims 8, *Yoseloff* additionally teaches a plurality of consolation awards. *See fig. 7; col. 7:19-28.*

In regards to claims 9, *Yoseloff* additionally teaches a display device connected to game controller wherein the display reveals a value of at least one award after the player selects an award. *See fig. 7; col. 7:19-63.*

**Claims 15-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yoseloff* in view of *Koza*, as applied to claims 1-14 above, in further view of Schwartz, et al., *The Encyclopedia of TV Game Shows*, 3<sup>rd</sup> Ed., Checkmark Books (1999) (hereinafter “*Encyclopedia*”)**

The gaming system suggested by the combination of *Yoseloff* with *Koza* describes a game in which a display device includes a plurality of player-selectable masked awards and means for revealing those awards wherein the awards are selected from independent pools. *See supra*. The combination describes all the features of the claimed subject matter except the following:

- a.      Revealing an award value having an intermediate value first if the player selects an award having a minimum value. (*Claim 15*)
- b.      Revealing an award value having a maximum value last if the player selects an award having a minimum value. (*Claim 16*)
- c.      Revealing an award value having a minimum value first if the player selects an award having an intermediate value. (*Claim 17*)
- d.      Revealing an award value having a maximum value last if the player selects an award having an intermediate value. (*Claims 18, 20*)
- e.      Revealing an award value having an intermediate value first if the player selects an award having a intermediate value. (*Claim 15*)
- f.      Revealing an award value having a maximum value last if the player selects an award having a maximum value. (*Claims 21*)
- g.      Revealing an award value having a minimum value first if the player selects an award having a maximum value. (*Claim 22*)
- h.      Revealing an award value having an intermediate first if the player selects an award having a maximum value. (*Claim 23*)

Art Unit: 3714

- i. Randomly determining whether to reveal the award having the minimum or intermediate value first if the player selects the award having the maximum value. (*Claim 24*)
- j. Randomly determining with equal probability to reveal the award having the minimum or intermediate value first if the player selects the award having the maximum value. (*Claim 25*)
- k. Revealing an award value having a maximum value last if the player selects a known award. (*Claim 26*)
- l. Revealing an award value having a minimum award first if the player selects a known award. (*Claim 27*)
- m. Revealing an award value having a intermediate award first if the player selects a known award. (*Claim 28*)
- n. Randomly determining whether to reveal the award having the minimum or intermediate value first if the player selects the known award. (*Claim 29*)
- o. Randomly determining with equal probability to reveal the award having the minimum or intermediate value first if the player selects the known. (*Claim 30*)
- p. Revealing all non-selected lower-value awards; revealing on high value award; revealing a selected lower value award; and revealing the other high value award. (*Claim 31*)
- q. Revealing all but one lower value award; revealing a non-selected higher value award; revealing a remaining lower value award; and revealing the selected high value award. (*Claim 32*)
- r. Revealing the player-selected award after another award is revealed; and revealing the highest value award last. (*Claim 33*)

Regardless of the deficiencies, these features would have been obvious to an artisan in view of *Encyclopedia*.



*Encyclopedia* describes the popular television game show LET'S MAKE A DEAL® which aired on various broadcast networks between 1963 and 1991. The show's players earned awards and optionally swapped them for awards hidden behind doors, curtains or beneath boxes. *See p. 125*. The hidden prizes included awards ranging in value from high value items (e.g. cash or merchandise) to consolation prizes of little value. *See id*. Consolation prizes were frequently revealed by the show's announcer in an entertaining presentation. *See id*.

The following facts about the process of revealing awards on LET'S MAKE A DEAL are provided under Official Notice based on Examiner Corbett Coburn's personal knowledge as described in the attached affidavit. In LET'S MAKE A DEAL the emcee would sometimes reveal non-selected awards before or after revealing the player's selected award in order to satisfy the player's and audience's curiosity. Notably, displaying unselected awards also served to advertise products provided by the show's sponsors and demonstrates the value of the non-selected prizes. Hence, LET'S MAKE A DEAL suggests revealing unselected awards to players before and after revealing a selected award to enhance a game by piquing a player's interest by satisfying a player's curiosity of forgone opportunities, providing entertaining award display, advertising desirable merchandise and proving the value of unselected prizes.

The methods of revealing award values listed in (a) – (r) above are equivalent variations of the method described by LET'S MAKE A DEAL because the claimed steps employ equivalent means of revealing awards for the same purpose of enhancing a player's interest in a game.

Generally, incorporating television game show themes into standalone gaming devices is known in the art. First, it benefits players by allowing those who could/would not travel to participate or prefer not to compete against others to have convenient access to a similar game for a single person. Second, it benefits operators by allowing them to take advantage of the popularity and name recognition of games with features proven to be popular. Third, it benefits the show's owners by allowing them to collect licensing fees. Accordingly, *Yoseloff* suggests automating the features of television game shows to

Art Unit: 3714

incorporate their themes into single-player gaming devices that are thematically consistent with the original show.

It is notoriously well known in the art of gaming devices to generate outcomes by either random or prescribed means. In adapting LET'S MAKE A DEAL into a gaming device, it would be obvious to an artisan to automate emcee's task of sometimes revealing unselected prizes by employing either a random or prescribed process in order to provide a gaming device that operates in a thematically consistent with the process employed on the game show.

In conclusion, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Yoseloff*, wherein a gaming device is based on the game show LET'S MAKE A DEAL, to incorporate the show's feature of sometimes revealing unselected awards to enhance the entertainment offered by the device by piquing a players interest by satisfying a player's curiosity of forgone opportunities, providing entertaining award display, advertising desirable merchandise and proving the value of unselected prizes.. The modification would attract and retain a greater number of players based on the game's connection to a widely recognized and popular game theme and thereby increase the operator's revenue.

Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yoseloff* in view of *Koza* and *Encyclopedia*, in further view of *Fey*, U.S. Patent 2,012,502 (Aug. 27, 1935).

The combination of *Yoseloff* with *Koza* and *Encyclopedia* suggests all the features of the claimed subject matter except (a) a secondary display device connected to a controller including means for revealing at least one of the masked awards; and (b) revealing means is a mechanical door that opens to disclose a masked award. Regardless of the deficiencies, the features were known in the art at the time of the invention and would have been obvious to an artisan in view of *Fey*.

*Fey* discloses an analogous coin operated game device wherein a mechanical door is opened to reveal prizes in response to a game outcome. Furthermore, it is notoriously well known in the art to incorporate secondary displays into gaming devices. Thus in view of *Fey*, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Yoseloff*, wherein animated doors are opened to reveal an award to add the feature of mechanical door. The modification would enhance the entertainment value of the gaming device by providing a retrospective manner of revealing awards that is thematically consistent of LET'S MAKE A DEAL wherein physical doors were raised to reveal prizes. As a result, operators would benefit from increased player usage and retention due to the connection to a widely recognized and popular game theme and thereby increase the operator's revenue

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new grounds of rejection.

Applicant's arguments with respect to claims 15-37 have been fully considered but are not persuasive. The applicants assert that the prior art does not teach the various claimed perturbations of revealing game outcomes and these features are not obvious in view of the prior art. The examiner respectfully disagrees. The standard of patentability is what the prior art taken as a whole at a time prior to the invention suggests to an artisan. In this case, *Yoseloff* discloses a gaming system that entices players to risk an initial award in return for the opportunity to receive greater payoff in a second game segment in which players chooses from several masked awards. In one embodiment, *Yoseloff* describes the LET'S MAKE A DEAL® game wherein players risk a prize in return for a masked prize behind one of three doors, as in the live television game show. *See fig. 6, 7; col. 7:18-33*. Furthermore, *Yoseloff*

Art Unit: 3714

suggests maintaining “thematic continuity” between the gaming device and the television game show upon which it is based. *See col. 7:48-63.*

*Encyclopedia* describes the television game show LET’S MAKE A DEAL®. The show’s players earned awards and optionally swapped them for awards hidden behind doors, curtains or beneath boxes. *See p. 125.* The hidden prizes included awards ranging in value from high value items (e.g. cash or merchandise) to consolation prizes of little value. *See id.* Furthermore, in LET’S MAKE A DEAL the emcee would sometimes reveal non-selected awards before revealing the player’s selected award. *See Examiner Corbett Coburn’s affidavit dated July 11, 2002.* Other times, the emcee would reveal non-selected awards after revealing the player’s selected award. *See id.* As a result, the excitement of the game was enhanced by piquing and satisfying the player’s curiosity. *See id.* In view of the television game show, LET’S MAKE A DEAL would suggest to an artisan to incorporate the features of sometimes sometimes revealing non-selected awards before or revealing the player’s selected award into a gaming device based on LET’S MAKE A DEAL to maintain thematic continuity with the show and take advantage of its methods for enhancing player excitement. Additionally, because game show varied the order of revealing selections, LET’S MAKE A DEAL suggests to an artisan to vary the order and priority in which prizes are revealed. Moreover, in view LET’S MAKE A DEAL, it would be within the ordinary skill in the artisan to devise various possible perturbations of for revealing selections in different orders and priorities.

Thus, in this case the combination of *Yoseloff* in view of *Koza* and *Encyclopedia*, when taken as a whole, suggests to an artisan at a time prior to the invention a gaming machine having thematic continuity with LET’S MAKE A DEAL in which a display device displays a plurality of player-selectable, masked awards selected from independent pools wherein the awards are revealed various orders and combinations.

Art Unit: 3714

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Ashburn whose telephone number is 703 305 3543. The examiner can normally be reached on Monday thru Friday, 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9302 for regular communications and 703 872 9303 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1078.

Steven Ashburn  
April 2, 2003



MARK SAGER  
PRIMARY EXAMINER